No. 110

In the Supreme Court of the United States

OCTOBER TERM, 1958

TAK SHAN FONG, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys,
Department of Justice, Washington 25, D. C.

INDEX

CITATIONS

Miscellaneous—Continued

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OPINION BELOW

The opinion of the Court of Appeals (R. 12–14) is reported at 254 F. 2d 4. The findings of fact and conclusions of law of the District Court appear at R. 4–5.

JURISDICTION

The judgment of the Court of Appeals was entered on March 20, 1958 (R. 15). The petition for a writ of certiorari was filed on June 16, 1958, and was granted on October 13, 1958 (R. 16). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether an alien whose years of physical residence in the United States followed an unlawful entry in 1952 may be naturalized under 8 U. S. C. (Supp. V) 1440a (2) on the basis that, on a previous occasion in

1951, he had been lawfully admitted for 29 days as a seaman.

STATUTE INVOLVED

The Act of June 30, 1953, c. 162, § 1, 67 Stat. 108, 8 U. S. C. (Supp. V) 1440a, provides in pertinent part:

> Notwithstanding the provisions of sections 310 (d) and 318 of the Immigration and Nationality Act, any person, not a citizen, who, after June 24, 1950, and not later than July 1, 1955, has actively served or actively serves, honorably, in the Armed Forces of the United States for a period or periods totaling not less than ninety days and who (1) having been lawfully admitted to the United States for permanent residence, or (2) having been lawfully admitted to the United States, and having been physically present within the United States for a single period of at least one year at the time of entering the Armed Forces, may be naturalized on petition filed not later than December 31, 1955, upon compliance with all the requirements of the Immigration and Nationality Act, except that—
>
> (a) he may be naturalized regardless of age;
>
> (b) no period of residence or specified period of physical presence within the United States or any State after entering the Armed Forces shall be required * * *;
>
> (c) the petition for naturalization may be filed in any court having naturalization jurisdiction * * *;
>
> (d) * * * the petitioner may be naturalized immediately if prior to the filing of the petition, the petitioner and the witnesses shall have appeared before and been examined by a representative of the Immigration and Naturalization Service; and

(e) no fee, except that which may be required by State law, shall be charged * * *.

STATEMENT

Petitioner, a native and citizen of China, arrived off Newport News, Virginia, on January 27, 1952, aboard the S. S. *Ocean Star*. Upon inspection by the Immigration and Naturalization Service, he was ordered detained on board the vessel as a person not admissible as a bona fide seaman. He escaped and remained at large in the United States until apprehended on June 8, 1952. After a hearing conducted on July 11, 1952, and exhaustion of administrative remedies, petitioner, on January 15, 1954, was ordered deported (R. 7–8). However, the delivery bond was cancelled by the Immigration and Naturalization Service upon learning that petitioner had been inducted into the Army on May 4, 1953[1] (R. 8). Petitioner served until May 3, 1955, at which time he was honorably discharged. He did not serve overseas (R. 8).

On December 22, 1955, he filed his petition for naturalization under the Act of June 30, 1953, *supra*, p. 2, in the United States District Court for the Southern District of New York, alleging that he was lawfully admitted to the United States "at Newport

[1] Petitioner's selective service file, which we have examined, gives no indication that the local board knew, either when petitioner registered with the board in December 1952 or when he was drafted in May 1953, the circumstances of petitioner's entry into the country or the fact that deportation proceedings were in process. Some five months after induction, in September 1953, the board received a letter from the Chief of the Expulsion Section of the New York Office of the Immigration and Naturalization Service requesting official verification that petitioner had been drafted.

News, Virginia, under the name of Tak Shan Fong on January 27, 1952 on the S. S. Ocean Star" (R. 3). At the hearing before the court, the Immigration and Naturalization Service recommended denial of the petition on the ground that his entry into the United States was unlawful (R. 8–10).

Petitioner's attorney then notified the court that petitioner had been at Honolulu, T. H., on two occasions prior to 1952. On August 24, 1951, he had been admitted at Honolulu as a seaman for 29 days and had departed with his ship. On October 15, 1951, at Honolulu, he had been ordered detained on board ship. The Immigration and Naturalization Service verified the prior entries but opposed the petition because the entry which resulted in his year's presence in the United States was unlawful.[1a]

The District Judge, upon the basis of the entry into the United States on August 24, 1951, at Honolulu, granted the petition for naturalization (R. 4–5).

On appeal, the Court of Appeals reversed *per curiam*. It based its holding upon its previous decision in *United States* v. *Boubaris,* 244 F. 2d 98, in which it had held, with one judge dissenting, upon facts similar to those involved here, that the statute "required that the 'single period of at least one year' be immediately consecutive to the lawful admission required by that section." Such continuity was found lacking here (R. 12–14).[2]

[1a] This information has been obtained from the Department of Justice file.

[2] Petitioner's motion for an *en banc* hearing was denied, with Chief Judge Clark noting that he agreed with the view of the dissent in *Boubaris* (R. 14).

SUMMARY OF ARGUMENT

Petitioner seeks naturalization under a statute relating to persons serving a minimum of 90 days in the Armed Forces, and requiring that he be a person "having been lawfully admitted to the United States, and having been physically present within the United States for a single period of at least one year at the time of entering the Armed Forces." To satisfy the law, petitioner seeks to combine a permitted visit ashore from a vessel docked at Honolulu in 1951 with an illegal physical presence in the United States commenced by escape from his vessel at Newport News, Virginia, in 1952. In the Government's view, it was the purpose of Congress, specifically stated in the legislative history, that the provision apply "only to aliens who are legally and lawfully in the United States." It cannot be applied to petitioner, who was not lawfully admitted, merely because in the past he had made a brief lawful entry and had then departed.

I

The statutory language, read as a whole, provides for a "single period" of physical presence, legally commenced by lawful admission and followed by entry into the Armed Forces. The word "and" joins the "lawful admission" and the "physical presence" requirements. A totally disconnected and abandoned admission, far in the past, cannot be tacked to an unlawful current physical presence in the United States. Cf. *Bonetti* v. *Rogers*, 356 U. S. 691. The statute requires either (1) lawful admission for per-

manent residence or (2) lawful admission for temporary purposes plus physical presence for a single period of at least a year. The physical presence requirement is a substitute for permanent admission, and it must be tied to a legal admission.

The enactment here does not purport to throw wide the doors of naturalization as an unlimited reward for a minimum of 90 days' service in the Armed Forces. The contrast between the language of this provision and that relating to veterans of World Wars I and II (Section 329 (a) of the Act of 1952) shows that Congress receded from its previous policy of permitting naturalization of those who served in the Armed Forces whether or not lawfully admitted for permanent residence. It decided not to permit naturalization of aliens who entered illegally, even if such illegal entry resulted in liability to military service. Petitioner, as an alien who entered illegally, is not eligible under this statute.

II

The legislative history confirms the purpose to limit the statute to aliens "lawfully in the United States."

A. A bill (H. R. 401) in the 82d Congress, comparable, in the particular here involved, to the statute ultimately enacted by the succeeding Congress, was explained as inapplicable to "anybody illegally in the United States." The consideration given that bill shows that there was disagreement as to whether the benefits of accelerated naturalization should be made available to those lawfully admitted for temporary purposes as well as to those admitted for permanent

residence. At no point was there evinced any intent to go further and cover aliens unlawfully present.

B. The history in the 83d Congress, which enacted the present legislation, shows—to use the sponsor's words—a purpose to restrict the benefits to aliens "lawfully in the United States."

As originally introduced (H. R. 4233), there was no provision for a "single period of at least one year at the time of entering the Armed Forces," and it was in the context of this version that the Deputy Attorney General made the suggestion of which petitioner seeks to avail himself—a suggestion that the presence in the United States at the time of entering the Armed Forces be prescribed to be "lawful" and that the alien have the burden of proving lawful status. The House committee disagreed, fearing that the "technicalities" involved in establishing "continuance" of lawful status as a nonimmigrant might unduly burden the alien.

The very fact that the House was concerned by the technicalities of "continuance" of lawful status shows that Congress was thinking of those whose original entry was legal, *e. g.*, as a visitor or student, but who might have overextended their stay. The Senate Committee added the present requirement of physical presence for at least a year to the provision permitting naturalization of lawfully admitted nonimmigrants. This was designed to make certain that a nonimmigrant could not obtain citizenship by enlisting immediately. Only if he stayed long enough to be subject to the draft was the nonimmigrant to be allowed

to be naturalized. But nothing in the discussion of these amendments shows any intent to depart from the clear understanding that the Act applied only to those lawfully admitted.

Congress, we believe, made a deliberate choice to exclude from the benefits of this legislation aliens who entered illegally, even if they became liable for service as the result of such illegal entry. Here, petitioner entered illegally and was drafted subsequent to such illegal entry. It would nullify the Congressional decision to permit him to be naturalized merely because, a year before his illegal entry, he entered as a seaman on shore leave and thereupon promptly departed.

ARGUMENT

Petitioner seeks naturalization under a statute stating the express requirement that the applicant be a person who has served 90 days in the Armed Forces from 1950–1955,[3] having been lawfully admitted to the United States. When the legislation was reported on the floor of the House of Representatives, its sponsor, replying to a direct question on the point, affirmed categorically that "it applies only to aliens who *are* legally and lawfully in the United States" (*infra*, p. 17; emphasis added). Moreover, the committee reports on the measure each quoted a letter of the Deputy Attorney General stating that benefits under the bill would be restricted

[3] The statute expressly applies only to aliens who served in the forces "after June 24, 1950, and not later than July 1, 1955." Also, the petition for naturalization had to be filed not later than December 31, 1955. *Supra*, p. 2.

to aliens "having" a "lawful" temporary or permanent residence (*infra,* pp. 15–16). It is the government's position, based upon the statutory language and history, that the Act cannot be applied to one whose entrance into the army followed an unlawful entry into the country.

I

THE STATUTE REQUIRES A LAWFUL PRESENCE IN THE UNITED STATES

The statute (*supra,* p. 2) provides for naturalization of aliens serving 90 days in the Armed Forces, between 1950 and 1955:

> (1) having been lawfully admitted to the United States for permanent residence, or (2) having been lawfully admitted to the United States, and having been physically present within the United States for a single period of at least one year at the time of entering the Armed Forces, * * *.

The natural reading of the quoted language in its entirety is that clause (2) requires a "single" period of physical residence, lawfully commenced with a legal entry and terminated at the point of entering the armed services. Under the wording of clause (2) alone, it seems evident that the word "and" effects a joinder of the requirements for lawful admission and for physical presence of one year. This becomes even clearer when clause (2) is compared with clause (1), which requires no fixed period of residence where the lawful admission is for permanent residence. Lawful admission for permanent residence, in this context,

could not possibly refer to some lawful admission years before, which had been abandoned; it obviously means lawfully admitted for permanent residence at the time of entrance into the army. See *Bonetti* v. *Rogers,* 356 U. S. 691, where this Court held that an entry which was followed by departure and subsequent readmission could not even be considered an entry under a statute providing for deportation as a consequence of certain activities taking place after entry. No more can an earlier abandoned temporary admission be used to satisfy clause (2), which requires not only a legal entry but also a single physical presence of at least a year. There is no warrant in the language of the statute for petitioner's attempt to split the requirements of clause (2) (which are clearly intended to be more stringent than clause (1)) into unconnected parts so that one of those parts—temporary lawful admission—could be met at any time in the alien's life, and, even though abandoned, tacked to a year's physical presence in the United States occurring years later.

On petitioner's theory, if his parents had brought him properly into the United States as an infant visitor in 1932 for only a few days, he could now contend that this early lawful admission must be coupled with his physical presence here as a deserting seaman in 1952 for the purposes of the naturalization statute. To state such a contention is in large part to answer it. The actual "lawful admission" now relied upon by petitioner is less dramatically removed in point of time, but is not different in kind. Equal violence

to the language of Congress is done by the coupling of a totally isolated and meaningless seaman's shore leave for a few weeks in Honolulu in 1951 with a physical presence in the United States commenced in 1952 with a totally different unlawful entry and continued by petitioner's ability to remain at large.[4]

Comparison of the instant, very limited, language with that of the broad provisions enacted for veterans of World Wars I and II [5] discloses that in the present statute Congress has no longer chosen to open the doors of citizenship wide in return for a period of service in the Armed Forces. Section 329 of the Immigration and Naturalization Act of 1952 permits naturali-

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[4] Such a strained interpretation was not sought by petitioner at the outset. In his petition for naturalization, he specified the lawful admission upon which he relied as the entry on January 27, 1952, at Newport News, Virginia (*supra*, p. 3). It was only when the illegality of his entry and presence became obviously insuperable that the earlier entry at Honolulu in 1951, detached and long since abandoned, was relied upon.

[5] Section 329 of the Immigration and Nationality Act of 1952 (8 U. S. C. 1440):

"Any person who, while an alien or a noncitizen national of the United States, has served honorably in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment or induction such person *shall have been in* the United States, the Canal Zone, American Samoa, or Swains Island, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. * * *" (Emphasis added.)

zation of an honorably discharged veteran of such wars if at the time of induction he was in the United States or certain possessions "whether or not he has been lawfully admitted to the United States for permanent residence." It permits naturalization of a person who had never been in the United States at the time of induction if he is subsequently admitted for permanent residence. The instant statute narrows the class of persons who are to be "rewarded" for service in the Armed Forces by prompt naturalization. It requires actual presence in the United States at the time of induction and it requires legal entry. Congress has thus made it clear that illegal entrants are no longer eligible for naturalization merely because, by their illegal entry, they have subjected themselves to the requirements of the draft acts.[6]

A similar contrast with specific language in other naturalization statutes is noted in *United States* v. *Boubaris,* 244 F. 2d 98 (C. A. 2), which the court below had previously decided upon virtually identical facts. The court there pointed out (244 F. 2d at 100):

> Where Congress has meant an unlawful admission to be no bar to naturalization, it has specifically so provided. See e. g. 8 U. S. C. A. § 1001 (1946 edition) 58 Stat. 886, 887 (1944);

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[6] Petitioner complains of the failure of the Immigration and Naturalization Service, upon belatedly learning of his induction, to obtain his release from the remainder of his term and to deport him forthwith (Pet. Br. 11). But liability to military service was one of the consequences which flowed from petitioner's voluntary decision to remain in the United States illegally.

where the language is: "* * * being unable to establish lawful admission into the United States," and also 8 U. S. C. A. § 1440 (1952), which contains similar language.

Petitioner, on the other hand, points to the Act of May 25, 1932, 47 Stat. 165, dealing with veterans of World War I, which was more explicit than the present statute in providing that the alien "shall be required to prove that immediately preceding the date of his petition he has resided continuously within the United States for at least two years, in pursuance of a legal admission for permanent residence." It may be granted that the instant statute is not as precise as that one, just as the instant requirements are not as stringent. The fact remains that the language involved here is clear enough to show that Congress did not intend to permit naturalization of illegal entrants. Petitioner was an illegal entrant when he entered the armed forces.[7] His entry remained illegal throughout his military service and thereafter.[8] He

[7] Where the entry which immediately preceded the physical presence was lawful for a temporary period, such as entry by a seaman, the courts have held that subsequent failure to maintain a lawful status does not bar naturalization under this statute. *In re Apollonio*, 128 F. Supp. 288 (S. D. N. Y.). Under this view, if petitioner had remained in the United States after his legal entry in 1951, and had served in the armed forces, he could have been naturalized.

[8] In *Tchakalian's Petition*, 146 F. Supp. 501 (N. D. Cal.), the court treated an entry of a member of the armed forces after service overseas as a lawful entry and permitted naturalization even though the physical residence preceded that lawful entry. Regardless of the validity of its reasoning, the decision that lawful entry after the continuous period of resi-

is therefore not in the group which Congress intended to benefit by this statute.

II

THE LEGISLATIVE HISTORY DISCLOSES A CLEAR INTENT THAT THE LEGISLATION APPLY ONLY TO ALIENS "LAWFULLY IN THE UNITED STATES"

If the purpose of Congress to limit the benefits of 8 U. S. C. 1440a to aliens who had been lawfully admitted to the United States at the time of their entrance into the armed services were otherwise doubtful, the legislative history would resolve the doubt.

The legislation, passed by the 83d Congress, was introduced in the House of Representatives, as H. R. 4233, on March 25, 1953 (99 Cong. Rec. 2332), and was reported out of committee by Congressman Graham on April 1, 1953 (99 Cong. Rec. 2639). At that time, Congressman Walter asked: "Is this not the bill that is identical with the law as it existed during the war with the exception that it *applies only to aliens who are legally and lawfully in the United States?*" (emphasis added). Congressman Graham replied, "That is a correct statement." There followed a question by Congressman McCormack: "This also covers those who are in the service, aliens, who have permanent or *temporary* visas?" To which Congressman Graham again replied, "Correct" (99 Cong. Rec. 2639; emphasis added).

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dence satisfies the statute does not serve petitioner here, where the original lawful entry (in 1951) had been terminated by departure and the necessary period of physical residence is not tied to any lawful entry.

This is the nub of the matter. In order to give a full picture of the history, however, we shall trace the various legislative proposals, made in the 82d and 83d Congresses, which culminated in the enactment of Section 1440a.

A. On January 3, 1951, Congressman Walter introduced H. R. 401 to provide for the expeditious naturalization of aliens serving in the armed forces (97 Cong. Rec. 30). In the committee report on the bill, there appeared significant language that was to characterize subsequent reports until the enactment of the present legislation. The stated purpose of the bill was to provide means for the "expeditious" naturalization of aliens serving in the Armed Forces (H. Rept. No. 1176, 82d Cong., 1st Sess., p. 1). It was then stated that, while the bill eliminated the requirement of a specified period of residence, "it proposes benefits only for the alien who has effected lawful entry, either in an immigrant or nonimmigrant status" (*id.*, p. 2).

As introduced by Congressman Walter, that bill extended its benefits to one—

> who having been lawfully admitted, temporarily or otherwise, * * * shall have been at the time of entering the Armed Forces within any such area [98 Cong. Rec. 776–777].

Congressman Walter assured the House that "there is nothing in the law that permits *anybody illegally in the United States* to take advantage of it" (98 Cong. Rec. 776; emphasis added). A letter of the Deputy Attorney General (March 13, 1952, S. Rep.

No. 1713, 82d Cong., 2d Sess., p. 4) expressed the same understanding, *i. e.*, that "the benefits of this bill are to be limited to aliens having a lawful temporary or permanent residence * * *" (*ibid.*).

When the bill reached the Senate, the provision for those lawfully admitted "temporarily or otherwise" was changed to require lawful admission "for permanent residence" (S. Rep. No. 1713, 82d Cong., 2d Sess., June 9, 1952, p. 2). In presenting the amended bill on the Senate floor, Senator McCarran stated: "This amendment is designed to prevent naturalization of aliens who jump ship or who otherwise remain in the United States in an illegal status but who succeed in getting in our Armed Forces" (98 Cong. Rec. 7798). But Senator Lehman pointed out that there were "those who may be lawfully admitted for temporary residence," citing the example of a student thus lawfully admitted (98 Cong. Rec. 9061–9062, 9063). Senator Lehman, in urging the reinstatement of coverage for those temporarily admitted (which was effected in the next Congress), pleaded the case of one admitted "for" lawful residence. Senator McCarran opposed the reinstatement (98 Cong. Rec. 9063). The bill was not passed.

What is noteworthy in the proceedings before the 82d Congress is that there was disagreement only as to whether the bill should go so far as to cover aliens having a lawful temporary status; at no time was there any suggestion that the bill should go further and cover aliens whose presence in this country and

induction came about as a consequence of an illegal entry.

B. In the 83d Congress, a number of bills for the same purpose were introduced (H. R. 1739, H. R. 4233, S. 693, S. 1759). The House Committee on the Judiciary reported out H. R. 4233 (the text appearing at 99 Cong. Rec. 2639) and it was upon the presentation of the bill on the floor of the House that there occurred the categorical statement by the sponsor, Congressman Graham (referred to *supra* p. 14), *i. e.*, that the bill "applies only to aliens who are legally and lawfully in the United States" (99 Cong. Rec. 2639).

The committee report (H. Rep. No. 223, 83d Cong., 1st Sess.) is consistent with the sponsor's interpretation. It stated the purpose of "expeditious" naturalization, but gave no indication of an intent to open the door to those who were inducted while illegally in the United States. It spoke of the difficulties of the serviceman with respect to the *procedure* of becoming naturalized.[9] It cited as examples of temporarily present aliens who would be covered by the bill the "students, visitors, 'treaty

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[9] "The routine naturalization procedure is impracticable in the case of the serviceman who, in the course of his training, is transferred from camp to camp * * *. Even more complicated is the case of the alien *admitted* temporarily who may return from honorable front-line service * * * to find himself confronted with an order of deportation. Consideration must also be given to the most unfortunate complications that might arise should an alien fall prisoner to the forces of an enemy state of which he is still technically a national" (*id.*, p. 2; emphasis added).

merchants' and their children, etc." who had been inducted under the selective service laws (*id.*, p. 2). It made no reference to aliens at large in the United States pursuant to unlawful entry.

The report also stated that the recommendations of the Department of Justice had generally been incorporated (*id.*, p. 2), setting forth in full the entire memorandum of the Deputy Attorney General (*id.*, pp. 3–4). This memorandum, like the interpretation by the sponsor of the bill, stated that the benefits of the bill were restricted to aliens "having" a "lawful" temporary or permanent residence (*id.*, p. 3). The committee did not adopt a suggestion of the Deputy Attorney General that the alien carry the burden of proof of lawful admission and that the word "lawfully" be repeated after the words "Armed Forces" in the phrase, "who, having been lawfully admitted to the United States * * * shall have been at the time of entering the Armed Forces within such area" (*id.*, p. 3; 99 Cong. Rec. 2639). As is apparent from the above-quoted excerpt from the bill, there had not yet appeared in the legislation at that stage any provision specifically requiring (as now) a "single period" of physical presence in the United States for at least a year at the time of entering the Armed Forces. Accordingly, petitioner's reliance upon the failure to adopt the Deputy Attorney General's suggestion (Pet. Br. 7) is not justified and, indeed, disregards the fact that the Senate, at a later stage, amended the legislation (*infra*, p. 20) in a fashion making more stringent the requirements as to nonimmigrants.

However, even as to this earlier form of the legislation, the committee discussion of the suggestion for amendment is opposed to petitioner's contentions, rather than in support. H. Rep. No. 223, 83d Cong., 1st Sess., p. 4, states:

> The suggestion made by the Department that the serviceman bear the burden of proving lawful admission was not incorporated in H. R. 4233, since the administrative officers would have access to proper official records to enable them to verify such admission.
>
> The proposal that the serviceman be required to have a lawful status at the time of entering the Armed Forces was not included in the bill. While lawful admission as an immigrant or nonimmigrant is held to be a prerequisite to naturalization under the terms of H. R. 4233, the committee is of the opinion that the technicalities involved in connection with the continuance of such status at the time of entering the Armed Forces would place an unwarranted burden on the serviceman and practically nullify the purpose of this legislation.

In relieving the serviceman of the "technicalities" of establishing "continuance" of the "status" of a lawfully admitted alien up to the time of entering the Armed Forces, the committee showed that it was thinking of "status" that had *originated* lawfully, but had not "continued" to remain lawful. It nowise suggests that a long-abandoned, prior, temporary lawful status would be sufficient where the alien's presence in the United States at the time of induction was actually the result of an illegal entry.

The Senate Committee was less generous in relation to aliens not admitted for permanent residence. The committee reported an amended bill with a one-year residence requirement, stating:

> The instant bill differs from the bill, S. 693, in one significant respect. The bill, S. 693, extends the benefits of the act to aliens who have been lawfully admitted into the United States as immigrants or nonimmigrants. The instant bill, while it retains this feature, merely provides that a nonimmigrant must be in the United States for a period of at least 1 year before his service in the Armed Forces begins. This change was made in order to conform the bill to the requirements of the Selective Service Act [S. Rep. No. 378, 83d Cong., 1st Sess., p. 4].[10]

Senator Watkins, in presenting the bill on the floor of the Senate, said (99 Cong. Rec. 6621):

> The bill also provides that a nonimmigrant must be in the United States for a period of 1 year before his service in the Armed Forces begins in order to conform the bill to the requirements of the Selective Service Act.
>
> I think most Members of the Senate will remember that aliens who have been in the United States a year, lawfully, can be required to serve under the Draft Act.

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[10] The Deputy Attorney General's memorandum, relating to the earlier form of legislation (see *supra*), was set forth in the Senate report with the statement that it was "not included" (p. 4).

The one-year residence provision certainly did not weaken the requirement of lawful admission as a nonimmigrant. Rather, it made certain that only the visitor who came lawfully and stayed a minimum of a year would become eligible, upon service in the Armed Forces, for accelerated naturalization.

It was, of course, for Congress to decide the terms and conditions of naturalization. We believe it plain that Congress proposed to grant naturalization only to those who were lawfully admitted; and that it did not intend to "reward" illegal entry by permitting naturalization, even if the illegal entry resulted in service in the Armed Forces. The deliberate choice which Congress has made would be nullified in this case if petitioner, who escaped from his ship and entered illegally, were allowed to be naturalized on the basis of the fact that, some time previously, he had made a fortuitous and unrelated entry-and-departure as a sailor on temporary shore leave.

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

J. LEE RANKIN,
Solicitor General.
MALCOLM ANDERSON,
Assistant Attorney General.
BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys.

JANUARY 1959.

U. S. GOVERNMENT PRINTING OFFICE: 1959